

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Petition of CTIA-The Wireless)	WT Docket No. 05-288
Association and the Rural Cellular)	
Association for Suspension)	
or Waiver of the Location-Capable)	CC Docket No. 94-102
Handset Penetration Deadline)	

**REPLY COMMENTS OF CTIA-THE WIRELESS ASSOCIATION® AND THE RURAL
CELLULAR ASSOCIATION**

CTIA – The Wireless Association® (“CTIA”)¹ and the Rural Cellular Association (RCA)² submit these reply comments in response to the comments filed by the National Emergency Number Association (“NENA”) and the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) on the CTIA and the Rural Cellular Association’s (“CTIA/RCA”) Joint Petition requesting relief of the December 31, 2005 deadline for 95 percent penetration of location-capable handsets.³ For the reasons set forth in this reply

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

² RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services. RCA was formed in 1993 to address the distinctive issues facing wireless service providers. Member companies offer service in more than 135 rural and small metropolitan markets where more than 14.6 million people reside in the United States.

³ Comments of NENA, WT Dkt. Nos. 05-268, 05-287, 05-288 (Oct. 21, 2005) (“NENA Comments”); Comments of APCO, WT Dkt. Nos. 05-288, 05-286, 05-287 (Oct. 21, 2005) (“APCO Comments”); Wireless Telecommunications Bureau Requests Comment on Joint Petition of CTIA and RCA Regarding the December 31, 2005 Deadline for Licensees Employing a Handset-Based E911 Phase II Location Technology to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Their Subscribers, *Public Notice*, WT Dkt. No. 05-288 (rel. Oct. 7, 2005).

and the CTIA/RCA Joint Petition,⁴ the Commission should suspend the December 31, 2005 deadline in set forth in section 20.18(g)(1)(v) of its Rules to give wireless carriers meeting certain criteria additional time to satisfy the penetration threshold or, alternatively, the Commission should establish a framework for wireless carriers seeking waivers of the rule. There is broad support for proposals laid out in the CTIA/RCA Joint Petition.⁵

I. THE PARTIES SUPPORT ESTABLISHING A FRAMEWORK TO ANALYZE INDIVIDUAL CARRIER HANDSET PENETRATION WAIVER REQUESTS

The parties submitting comments on the Joint Petition support the establishment of a waiver framework with criteria for assessing individual carrier waiver requests.⁶ CTIA/RCA support a three-part framework for streamlining the waiver request and review process, including the factors justifying grant of a waiver.⁷ APCO and NENA's comments address certain criteria suggested in the CTIA/RCA Joint Petition, such as lower than expected churn and PSAP readiness.⁸ While CTIA/RCA agree with NENA that presence of one of the factors cited should

⁴ Joint Petition of CTIA-The Wireless Association and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC. Dkt. No. 94-102 (June 30, 2005) ("CTIA/RCA Joint Petition").

⁵ See e.g., Initial Comments of the National Association of Regulatory Utility Commissioners Supporting the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Dkt. No. 05-288 (Oct. 17, 2005) ("NARUC Comments"); Comments of the South Dakota Public Utilities Commission, WT Dkt. No. 05-288 (Oct. 18, 2005) ("SDPUC Comments"); Comments of United States Cellular Corporation, WT. Dkt. No. 05-288 (Oct. 21, 2005) ("USCC Comments").

⁶ See APCO Comments at 3 (not opposing case-by-case waivers that are properly supported and demonstrate best efforts to meet requirement despite factors clearly beyond carrier's control; NENA Comments at 1, 5 (preferring waiver framework as it may serve public interest so long as waiver grants are accompanied by new and firm deadlines).

⁷ (1) The carrier would have to make an initial "threshold" showing that it has made a good-faith effort to comply with the Commission's E911 Phase II interim deployment requirements and other FCC E911 implementation rules; (2) the carrier would have to demonstrate that it has satisfied at least one of several established factors that would justify grant of the waiver;⁷ and (3) a carrier meeting the first two criteria would be granted additional time to achieve the 95 percent penetration benchmark, with the amount of time allowed depending on the individual carrier's circumstances. See CTIA/RCA Joint Petition at 11-15.

⁸ See APCO Comments at 3; NENA Comments at 4-5.

not, in itself, be reason to grant waiver⁹ and it is extremely unlikely that only one factor will be the sole reason supporting a carrier's waiver request.

A. The Commission Cannot Ignore Consumer Resistance and Lower Than Expected Churn When Determining Whether Grant of a Waiver Is Justified

APCO and NENA support analyzing carrier waiver requests on an individual basis, but contend that lower than expected churn should not be a significant factor for the Commission to consider.¹⁰ However, the Commission's churn predictions were one of the factors it considered in establishing the December 31, 2005 deadline, and wireless carriers (and their customers) should not be penalized and forced to replace their handsets to the extent the Commission's own forecasts have proven to be overly pessimistic in light of the wireless industry's success in improving customer satisfaction and reducing churn. NENA further asserts that it does not necessarily follow that customers would not upgrade their wireless device when the PSAP serving a customer's home area is not Phase II ready, since wireless customers use their phones in other areas that are Phase II operational.¹¹ CTIA/RCA agree that local PSAP readiness is only one factor to be considered, but given the patchwork quilt of PSAP deployment of wireless E-911 Phase II capabilities, it is difficult to apply local PSAP deployment in reviewing such waivers. Undeniably, many wireless customers travel with their phones to regions that may be serviced by Phase II equipped PSAPs. However, when consumers decide to upgrade their handsets to obtain new features their major interest is obtaining the benefits of these new features in the market where the phone will be used primarily. As the record demonstrates, consumers' resistance to upgrade their handsets is especially true for carriers servicing rural areas

⁹ See NENA Comments at 5-6.

¹⁰ See APCO Comments at 4; NENA Comments at 4.

¹¹ See NENA Comments at 4.

whose subscribers live in sparsely populated areas and use powerful three watt analog phones to overcome coverage obstructions and increase service range.¹²

APCO observes in its comments that no reliable method exists to measure “customer resistance.”¹³ CTIA/RCA suggest that one measure is consumers’ response to carriers’ marketing campaigns.¹⁴ Wireless carriers’ affirmative steps to encourage existing customers to replace handsets should be a factor in the Commission’s review. When determining whether to grant a waiver, it is appropriate for the Commission to consider carriers’ efforts to educate consumers on the benefits of upgrading to new handsets as well as their targeted advertising, special deals and handset replacement offers carriers provide to satisfy their customers.¹⁵ In measuring carriers’ efforts, the Commission should not limit its review solely to carriers’ educational efforts regarding the benefits of the advanced E911 capabilities, since carriers are constrained in their ability to advertise the benefits of such features when the life-saving location capabilities may not be available in all localities. Accordingly, all of a carrier’s efforts to incent consumers to upgrade their handsets should be considered by the Commission as a factor in its review of a waiver request. This is appropriate since consumers typically decide to obtain a new

¹² See SDPUC Comments at 2-3; SouthernLinc Comments at 4; NARUC Comments at 5; Alltel Petition at 8-9.

¹³ See APCO Comments at 4.

¹⁴ See *e.g.* ACS Wireless, Inc. Comments in Support of CTIA/RCA Joint Petition to Suspend Deadline for Location-Capable Handset Penetration or, Alternatively, for Waiver of 95% Penetration Requirement, CC Dkt. Nos. 94-102, 05-288, at 5 (Oct. 21, 2005) (“ACSW Comments”) (reporting only 17 of 305 TDMA customers (roughly 5%), chose to upgrade during the ACSW’s “customer appreciation” campaign trip to the remote town of Sitka, Alaska); SouthernLINC Comments at 4; Alltel Petition at 9.

¹⁵ See *e.g.*, Comments of Motorola, Inc. WT Dkt. No. 05-286, at 5 (Oct. 21, 2005) (discussing the efforts of Motorola and Sprint Nextel to encourage subscribers to reflash handsets, including hosting a raffle of more than \$1 Million worth of Cadillacs); Sprint Corporation Fifteenth Quarterly E911 Implementation Report, CC Dkt. 94-102, at 6-8 (Aug. 1, 2005) (“Sprint Quarterly Report”); Nextel Communications Inc. Phase I and Phase II E911 Quarterly Report, CC Dkt. 94-102, at 7-10 (Aug. 1, 2005) (“Nextel Quarterly Report”); Alltel Petition at 5; ALLTEL Communications, Inc. E911 Twelfth Quarterly Report, CC Dkt. 94-102, at 1 (Aug. 1, 2005) (“Alltel Quarterly Report”); Verizon Request at 6, 8.

handset (or change carriers) for a variety of reasons. Limiting the Commission's review to only one factor would not reflect the totality of wireless carriers' efforts in this area.

B. Increased PSAP Phase II Readiness Will Help Carriers Reach the Commission's E911 Goals

NENA's latest reports indicate that the availability of E911 Phase II service has improved since their prior report.¹⁶ According to NENA's statistics, 20 states now have Phase II deployments in 60% or more of its counties and another 8 states have 100% of counties that are Phase II ready.¹⁷ While CTIA/RCA acknowledge this progress, which brings us closer to reaching the goal of ubiquitous E911 Phase II coverage, it does not eliminate the problem CTIA and RCA identified in the Petition, nor does the recent progress provide any basis for not granting waivers necessitated by the slower than anticipated deployment of E911 Phase II capabilities at the local PSAP level.

While the availability of Phase II capabilities has increased, more than half of the PSAPs are still not able to support these capabilities, and it is estimated that billions of dollars and at least four more years are needed to modernize the nation's 911 system for wireless calls.¹⁸ This state of affairs is certainly not the fault of the cash-strapped PSAPs, but this level of PSAP readiness is one of the many factors the Commission should take into consideration when evaluating individual waiver petitions.¹⁹

¹⁶ See NENA Comments at 4.

¹⁷ While another 12 states fall into the range from 20 to 60% of counties prepared to receive and use Phase II data, 11 states are less than 10% Phase II ready. See National Emergency Number Association, Percentage of Counties That Have Implemented Phase II Deployments, at <http://nena.ddti.net/Reports/report6.asp> (last accessed on 10/28/05).

¹⁸ See Anne Marie Squeo, *Cellphone Hangup: When You Dial 911, Can Help Find You?*, WALL ST. J., May 12, 2005, at A1.

¹⁹ See USCC Comments at 6 (stating "if local PSAPs have not been upgraded, wireless carriers cannot advertise the availability of location technology assistance to encourage/entice these otherwise reluctant customers to upgrade their handsets.").

II. GENERAL SUSPENSION OF THE HANDSET PENETRATION DEADLINE IS JUSTIFIED FOR CARRIERS WHO HAVE SATISFIED THE 100 PERCENT DIGITAL ACTIVATION REQUIREMENT

Good cause exists to justify suspension of the 95 percent handset deadline for those carriers that have met the requirement that “100 percent of all new digital handsets activated are location-capable.” As the record illustrates, the majority of carriers are encountering difficulties which will prevent them from reaching the 95 percent benchmark by December 31, 2005, despite their considerable investment in Phase II capable technology, their aggressive marketing campaigns to encourage handset replacement, and their ongoing partnerships with PSAPs to facilitate deployment.²⁰

The wireless industry fully supports the Commission’s wireless E911 goals, which will only be achieved with the ubiquitous deployment of Phase II location capabilities. Despite this support, APCO warns that fairness towards carriers that have demonstrated best efforts may open the door for others who have ignored the requirement or made no meaningful efforts to speed deployment and penetration.²¹ As the Petition makes clear, suspending the December 31 compliance deadline should not mean a free pass for any wireless carrier who negligently has disregarded the Commission’s rules. For this reason, CTIA/RCA recommended a limited waiver available only to those carriers who are in compliance as of December 31, 2005 with the requirement that 100 percent of all new digital handset activations are location-capable.²² By

²⁰ See generally, Verizon Wireless, Request for Limited Waiver, CC Dkt. No. 94-102 (Oct. 17, 2005) (“Verizon Request”); Alltel Corporation, Alltel Corporation Petition for Limited Waiver, CC Dkt. No. 94-102 (Sept. 30, 2005); SouthernLINC Wireless, Request for Waiver by SouthernLINC Wireless, CC Dkt. 94-102 (July 26, 2005) (“SouthernLINC Request for Waiver”); Cellular South Licenses, Inc., Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission’s Phase II E911 Rules, CC Dkt. 94-102 (Sept. 20, 2005).

²¹ See APCO Comments at 7.

²² See CTIA/RCA Joint Petition at 10.

restricting relief in this manner, the Commission can ensure that wireless carriers who have willfully disregarded the Commission's E911 requirements will not be eligible for relief.

APCO and NENA have also expressed strong opposition against a "blanket relief" or an indefinite or open-ended dispensation.²³ The CTIA/RCA Joint Petition proposes that the rule suspension should last no longer than necessary to reflect the circumstances of a wireless carrier's customer base.²⁴ Many carriers are nearing the 95 percent penetration benchmark, and only need an additional few months to swap out the remaining non-compliant handsets, while some other carriers are further behind because they serve a larger analog customer base or are facing unique technology challenges.²⁵ Nonetheless, all carriers who remain in compliance with the requirement that 100 percent of all new digital handset activations must be location-capable will meet the Commission's benchmark for 95 percent penetration through the market forces originally considered by the Commission.²⁶ For this reason, the Commission need not grant waivers on a carrier-by-carrier basis so long as it conditions its suspension of the December 31 compliance deadline on a carrier's continuing compliance with the requirement that 100 percent of all new handset activations be location-capable handsets.

²³ See APCO Comments at 2; NENA Comments at 1, 5.

²⁴ See CTIA/RCA Joint Petition at 10.

²⁵ See e.g., Nextel Communications Inc. Phase I and Phase II E911 Quarterly Report, CC Dkt. 94-102, at 10 (Aug. 1, 2005) ("Nextel Quarterly Report") ("On a merged basis, Sprint and Nextel would likely achieve 80-85% handset penetration by the end of [2005]."); Alltel Corporation Petition for Limited Waiver, CC Dkt. No. 94-102, at 17 (Sept. 30, 2005) ("Alltel Petition") (anticipating that well over 8 million of its approximately 10 million subscribers and roughly 85% of its pre-merger subscriber base will have ALI-capable handsets by December 31, 2005; see also SouthernLINC Request for Waiver.

²⁶ As the Commission has recognized, "ensuring that 100 percent of all new digital handsets activated are location-capable is an important step that should eventually lead to ninetyfive percent penetration of location-capable handsets." *Order*, CC Docket 94-102, FCC 05-182 (rel. Oct. 28, 2005), at ¶ 17.

CONCLUSION

For the foregoing reasons, CTIA and RCA respectfully request that the Commission adopt the proposals set forth in the CTIA/RCA Joint Petition and suspend the 95 percent ALI-capable handset penetration deadline for any wireless carrier whose digital wireless activations are 100 percent location-capable as of December 31, 2005. In the alternative, CTIA and RCA urge the Commission to establish a framework that sets forth clear criteria for assessing individual carrier waiver requests and allows carriers a meaningful opportunity to demonstrate that they are entitled to relief.

Respectfully submitted,

Rural Cellular Association

/s/ David L. Nace

David L. Nace

Its Attorney

Lukas, Nace, Gutierrez & Sachs, Chtd.
1650 Tysons Blvd., Suite 1500
McLean, VA 22102
(703) 584-8661

CTIA - The Wireless Association®

/s/ Marlo Go

Michael F. Altschul

Senior Vice President & General Counsel

Marlo Go

Staff Counsel

Its Attorneys

CTIA - THE WIRELESS ASSOCIATION®
1400 16th Street, N.W., Suite 600
Washington, D.C. 20036
(202) 785-0081

October 31, 2005